Frauds. Uniform Sales Act § 4(1). By inference from the case of goods this is so although the chose in action was to be acquired in the future, Uniform Sales Act § 4(2); *R. & L. Co.* v. *Metz* (1916) 175 App. Div. 276, 160 N. Y. Supp. 145, *aff'd* (1916) 219 N. Y. 556, 114 N. E. 1082, or did not exist when the contract was made. Uniform Sales Act § 4(2); see Williston, *Sales* (1909) § 55. The court in the instant case reaches the decision by arguing by analogy from the former New York rule that a contract for non-existent goods is outside the Statute, overlooking the abrogation of that rule. Sales Act § 4(2); *Warren Chemical and Mfg. Co.* v. *Holbrook* (1890) 118 N. Y. 586, 23 N. E. 908. Nevertheless the result seems correct. Definitions of a chose in action agree that it is a claim enforcible by judicial proceedings. 2 *Words and Phrases* (1904) 1144. In the instant case there is neither a contract to sell or assign nor a sale or assignment of any legal claim. There is merely the creation of a claim against the promisor that he shall pay through his agent or procure another to pay. The formation of a contract is not within the Statute. It is possible to conceive of the formation of a contract as the grant or transfer of a chose in action from the promisor to the promisee. This would, however, put every contract within the Statute of Frauds, and does not accord with the accepted notions of the common law which distinguish between the creation and transfer of a claim.

TORTS—INFANTS—ACTION FOR PRE-NATAL INJURY.—The plaintiff's mother, while walking along a public sidewalk during pregnancy, fell through a coal hole which had been negligently left open by the defendant. As a consequence the plaintiff, while yet unborn, was injured for life. *Held,* Cardozo, *J.,* dissenting, for the defendant. *Drobner* v. *Peters* (1921) 232 N. Y. 220, 133 N. E. 567.

This decision reverses the Appellate Division and establishes for the first time the New York law on the question, following the weight of authority elsewhere. See (1913) 13 COLUMBIA LAW REV. 359. The decision in the lower court, nevertheless, was hailed as "an interesting and commendable development of the law." See (1921) 21 COLUMBIA LAW REV. 199. The science and humanitarianism of this age can regard the stand of the Court of Appeals as surprising and more than conservative. *Cf.* Pound, *Mechanical Jurisprudence* (1908) 8 COLUMBIA LAW REV. 605; *Hynes* v. *New York Central R. R.* (1921) 231 N. Y. 229, 131 N. E. 898, discussed in (1921) 21 COLUMBIA LAW REV. 827, and in (1921) 35 Harvard Law Rev. 68; *Katz* v. *Kadans & Co.* (Ct. of App. 1922) 66 N. Y. L. J. 1651.

TORTS—NEGLIGENCE—PROXIMATE CAUSE.—The defendant's train, negligently operated, struck an automobile at a crossing and threw it against a switch stand whereby the track was turned so that the train ran on a sidetrack and struck some cars. As a result, the plaintiff's decedent, a passenger, was thrown from her seat and injured. *Held,* that the trial court was right in directing a verdict for the defendant, as the defendant's negligence was not the proximate cause of the injury. *Engle* v. *Director General of Railroads* (Ind. 1921) 133 N. E. 138.

Negligence in the abstract is non-existent. See *Thomas* v. *Quartermaine* (1887) L. R. 18 Q. B. D. 685, 688. The elements of negligence are a duty to use due care, owed by the defendant to the plaintiff, failure to perform that duty, and injury resulting to the plaintiff. See *Faris* v. *Hoberg* (1893) 134 Ind. 269, 274, 33 N. E. 1028. For a recovery the injury must also be the natural and probable result of the negligence. *Douglass* v. *Railroad Co.* (1904) 209 Pa. St. 128, 58 Atl. 160. But it need not be the inevitable result. *Burk* v. *Creamery Package Mfg. Co.* (1905) 126 Iowa 730, 102 N. W. 793. Yet the specific injury need not have been foreseen, if some resulting injury might reasonably have been anticipated. *Hill* v. *Winsor* (1875) 118 Mass. 251. Nor will the intervention of an unconscious